

**United States Department of Labor
Employees' Compensation Appeals Board**

M.E., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Wilkes-Bare, PA, Employer**

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**Docket No. 06-2163
Issued: June 6, 2007**

Appearances:

Thomas Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 26, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 3, 2006, in which an Office hearing representative affirmed, as modified, the denial of appellant's recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she had disability, beginning April 11, 2002, causally related to her accepted emotional condition.

FACTUAL HISTORY

On April 15, 2002 appellant, then a 34-year-old pharmacy technician, filed an occupational disease claim alleging that she suffered from severe panic disorder, anxiety and severe depression in the performance of duty. She alleged that her condition was related to various factors of her employment, which included stress due to the pace of the job, being

overworked due to understaffing and deadlines. Appellant alleged that she first realized that the condition was related to her employment on February 18, 2002. She stopped work on March 28, 2002.¹ Appellant was terminated by the employing establishment on April 19, 2002.²

On April 23, 2002 the employing establishment controverted the claim and alleged that appellant related that her condition was not employment related.

In an April 25, 2002 attending physician's report, Dr. Matthew Berger, Board-certified in internal medicine, advised that appellant related that on February 12, 2002 she was at work when she developed severe anxiety and panic attacks, tremors, palpations, shortness of breath and depression. He checked the box "no" in response to whether appellant had a preexisting condition and in response to whether he believed that appellant's condition was caused or aggravated by an employment activity. Dr. Berger diagnosed panic disorder and depression and opined that appellant was totally disabled from March 29, 2002.

In a June 4, 2002 report, Dr. Bruce E. Jacobs, Board-certified in family medicine, noted that on February 12, 2002 appellant was found to be anxious and depressed. He indicated that she related that the increased stress from her new job, learning new skills and worries about mistakes with her medication and the additional pressures of being quick and efficient had made her worse. Dr. Jacobs opined that he was in "full agreement with her that job 'pressures' could have contributed to an acute exacerbation of preexisting anxiety and depression and over the course of multiple further visits to the present, that she might need to find other, less stressful types of employment." He opined that appellant's symptoms from February 12 through April 10, 2002 became bad enough that she needed to be out of work to receive treatment from Dr. Berger.

In a June 6, 2002 disability certificate, Dr. Berger opined that appellant was under his care since April 2, 2002 for major depression and opined that she was exhibiting symptoms that prohibited her from returning to work.

By decision dated January 16, 2003, the Office denied appellant's claim for compensation on the basis that the medical evidence of record failed to establish a causal relationship between the claimed emotional condition and factors of her federal employment.³

On February 13, 2003 appellant requested a hearing, which was held on November 13, 2003.

¹ In an October 16, 2002 memorandum, the employing establishment indicated that appellant was not at work since February 28, 2002.

² The record reflects that appellant began her employment with the employing establishment on December 16, 2001. She received a notice of removal on April 8, 2002.

³ The Office accepted that appellant performed the duties of a pharmacy technician from December 16, 2001 until April 12, 2002; that the section of the employing establishment in which appellant was employed was understaffed during this time period; and that she was required to prepare and deliver medications to nurses within a prescribed period of time.

In a February 13, 2003 report, Dr. Jacobs noted appellant's history of injury and treatment. He also advised that appellant related that she was fired from the employing establishment on April 16, 2002 and that "this made her even more depressed and anxious." Dr. Jacobs also indicated that Dr. Berger switched medications and opined that the "severity of the symptoms warranted [appellant] not performing any kind of work [un]til at least July 1, 2002." Dr. Jacobs noted that he had seen appellant seven more times for the same symptoms but that Dr. Berger was predominantly handling her case. In addition, he advised that on October 14, 2002 appellant was admitted to the hospital for a severe major depressive episode and opined that appellant's previous employment contributed to her depression and anxiety. Dr. Berger recommended that appellant "should be granted disability at present until her depression and anxiety symptoms improve significantly to the point where she can perform useful work."

In a report dated February 21, 2003, Dr. Berger advised that appellant was suffering from symptoms of severe panic disorder and manifesting the symptoms of severe panic disorder. He noted that these included shortness of breath, heart palpitations, diaphoresis, panic, light-headedness, dizziness, shaking spells and excessive worrying. Dr. Berger indicated that, after these attacks, appellant would become sleepy, sedated and unable to function. He opined that appellant developed these symptoms after a work-related stress. Dr. Berger noted that appellant was feeling "burned out" at work and overwhelmed and that "[e]ven simple tasks had become overwhelming and she felt that she was no longer able to function because of the stress of the environment at work." He noted that her problems at work included severe staffing shortages, personnel problems and equipment failure, which made her position even "more anxiety provoking." Dr. Berger also explained that appellant had no previous psychiatric history and opined that the work-related stress lead to her current panic disorder and that she continued to be under his care and unable to function. Furthermore, he noted that he had made a typographical error on his April 18, 2002⁴ report, when he checked the box that appellant's condition was not caused by her employment activity and added that it should have been marked "yes."

In a December 29, 2003 statement, appellant clarified that her illness actually began on February 12, 2002 and further described those factors of her employment which she believed contributed to her condition. She alleged that she never received assistance from the supervising pharmacist, although she did receive help from other pharmacists. Appellant explained that scanning was comprised not only of scanning bar codes, but that it included making telephone calls to patients and working the window. She also alleged that working mail order was very stressful as she did not know where things were and she was not familiar with hospital items. Appellant also alleged that the machine in the pharmacy was broken and it made her job harder.

By decision dated March 26, 2004, the Office hearing representative vacated the Office's January 16, 2003 decision denying appellant's claim. The Office hearing representative found that appellant had established a compensable factor related to her assigned duties and instructed the Office to refer appellant for a second opinion examination.

⁴ It appears that he is referring to the April 25, 2002 report.

By decision dated June 1, 2004, the Office reissued its decision of January 16, 2003. The Office explained that it attempted to receive the hospital records; however, it did not receive a response to its request for the hospital records from appellant or her representative.

On June 7, 2004 appellant's representative requested a hearing, which was held on March 30, 2005.

The Office received several records related to a November 20, 2002 hospital visit. They included a November 20, 2002 hospital record from Dr. Joseph Szustak, an osteopath, who determined that appellant had a normal examination. In a separate report also dated November 20, 2002, Dr. Berger diagnosed appellant with major depression, recurrent and panic disorder.

By decision dated May 18, 2005, the Office vacated the June 1, 2004 decision and referred appellant for a second opinion with Dr. Parcshkumar Solgama, a Board-certified psychiatrist.

In a July 26, 2005 report, Dr. Solgama noted appellant's history of injury and treatment and opined that appellant's "emotional condition was not caused but rather aggravated by the factors of employment" while working at the employing establishment. He noted that a previous history as far back as July 14, 2000, of anxiety related symptoms and noted that this was documented in a March 7, 2001 treatment note in which appellant had complaints of recurrent anxiety and depression, prior to the event in question. Dr. Solgama opined that appellant's symptoms of anxiety and depression existed prior to the event in question during her work at the employing establishment and that the work stressors contributed to the increase of symptoms. He opined that appellant's "preexisting condition was aggravated due to the stress at work during her employment at the employing establishment." Dr. Solgama further noted that appellant was not working at the employing establishment since April 12, 2002 and the work-related stress was no longer a factor in aggravating her condition.

On September 8, 2005 the Office accepted the claim for temporary aggravation of depression resolved.

In an October 4, 2005 attending physicians report, Dr. Berger advised that appellant was working as a pharmacy technician and that she had panic, anxiety and depression due to the job stress. He checked the box "yes" in response to whether appellant had a preexisting condition. Dr. Berger also checked the box "yes" in response to whether he believed that appellant's condition was caused or aggravated by an employment activity and filled in that appellant's underlying "affective disorder was exacerbated by job stress." He diagnosed depressive disorder and panic disorder and opined that appellant was totally disabled from February 12, 2002 to the present.

On October 14, 2005 appellant filed a Form CA-7, claiming compensation for wage loss for the period February 12, 2002 through October 11, 2005.

By decision dated October 20, 2005, the Office denied appellants claim for compensation, finding that there was no evidence that appellant was disabled after February 12, 2002.

The Office subsequently received numerous treatment notes from Dr. Berger in which he diagnosed appellant with ongoing anxiety and depression. They included reports dating from April 18, 2002 to February 28, 2006. His early reports indicate that appellant's condition was related to situation stressors; however, in his October 8, 2005 report, Dr. Berger opined that appellant's condition was stable and unrelated to situational stressors.

On October 27, 2005 appellant's representative requested a hearing, which was held on February 8, 2006. During the hearing, appellant's representative alleged that the evidence of record supported that appellant was disabled due to the aggravation of her depression at least for a temporary period. Furthermore, he alleged that the questions to the second opinion physician were leading.

By decision dated April 3, 2006, the Office hearing representative reversed the Office's October 20, 2005 decision with respect to the denial of the period February 12 to April 10, 2002 and affirmed the denial of the period April 11, 2002 to the present.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁶ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁷

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁸ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁹

Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.¹⁰ Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹¹ The Board has held that

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

⁹ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

¹⁰ *Edward H. Horton*, 41 ECAB 301 (1989).

¹¹ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹² While there must be a proven basis for the pain, pain due to an employment-related condition can be the basis for the payment of compensation.¹³ The Board, however, will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁴

When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.¹⁵

ANALYSIS

On September 8, 2005 the Office accepted appellant's claim for temporary aggravation of depression, which had resolved. An Office hearing representative on April 3, 2006 determined that the evidence supported that appellant was disabled for the period February 12 to April 10, 2002. However, the Office hearing representative affirmed the Office's prior denial of wage-loss compensation for the period beginning April 11, 2002. As noted, appellant bears the burden of proof in establishing entitlement to such compensation.

In a July 26, 2005 report, Dr. Solgama, a Board-certified psychiatrist and second opinion physician, noted appellant's history which included anxiety-related symptoms in July 2000. He indicated that appellant's "emotional condition was not caused but rather aggravated by the factors of employment." Dr. Solgama opined that appellant's "preexisting condition was aggravated due to the stress at work during her employment at the employing establishment." He also noted that appellant had not worked at the employing establishment since April 12, 2002 and opined that the work-related stress was no longer a factor in aggravating her condition. Dr. Solgama provided a rationalized opinion and explained the reasons for his conclusions. The Board finds that his report supports that appellant no longer had any disability after April 11, 2002 as she was no longer exposed to the work-related stress. The Board also notes that this is the only report from a psychiatrist, the relevant field in this matter,¹⁶ and his report is sufficient to represent the weight of the evidence.

¹² *John L. Clark*, 32 ECAB 1618 (1981).

¹³ *Barry C. Peterson*, 52 ECAB 120 (2000).

¹⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *See James L. Hearn*, 29 ECAB 278 (1978); *see also Raymond W. Behrens*, 50 ECAB 221 (1999).

¹⁶ *See Manohar Singh*, 37 ECAB 821 (1986) (the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians).

Appellant submitted several reports from Dr. Berger, a Board-certified internist, who advised that appellant was totally disabled. On April 25, 2002 Dr. Berger diagnosed panic disorder and depression and opined that appellant was totally disabled from March 29, 2002. However, he did not address why appellant was totally disabled due to residuals of the accepted employment injury. A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury.¹⁷ In his June 6, 2002 disability certificate, Dr. Berger found appellant disabled but he did not explain how appellant's employment condition caused her disability. In February 13 and 21, 2003 reports, Dr. Berger advised that appellant had severe panic disorder and manifested symptoms after work-related stress and opined that appellant was no longer able to function because of the stress of the environment at work. While he described factors of appellant's employment, which were considered by the Office, he did not appear to be aware that appellant stopped work in February 2002 and thus his opinion that she was being affected by factors of her employment is of limited probative value. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.¹⁸ In his October 4, 2005 report, Dr. Berger found appellant disabled and indicated that she had a preexisting condition. He checked a box "yes" regarding whether appellant's condition was caused or aggravated by an employment activity, noting that appellant's underlying "affective disorder was exacerbated by job stress." Dr. Berger's report, however, is of little probative value as the Board has held that the checking of a box "yes" on a form report, without additional explanation or rationale, is insufficient to establish causal relationship.¹⁹ He did not explain the reasoning behind his opinion on causal relationship. Other treatment notes from Dr. Berger did not address the cause of any disability beginning on or after April 11, 2002.

In a February 13, 2003 report, Dr. Jacobs, a family practitioner, advised that appellant related that she was fired from the employing establishment on April 16, 2002 and that "this made her even more depressed and anxious." He noted that Dr. Berger switched medications and opined that the "severity of the symptoms warranted [appellant] not performing any kind of work [un]til at least [July 1, 2002]." However, Dr. Jacobs did not describe the findings that led him to conclude that appellant could not perform any type of work until at least July 2002. For example, he did not describe the symptoms that prevented appellant from performing any type of work. Dr. Jacobs did not provide objective findings related to the accepted condition that supported disability and the physician did not otherwise present medical rationale regarding causal relationship for the period of disability. While Dr. Jacobs advised that being fired from the employing establishment made appellant even more depressed, this would not relate to compensable factors of appellant's employment²⁰ or be a result of an accepted condition.

¹⁷ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005).

¹⁸ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁹ *Calvin E. King*, 51 ECAB 394 (2000).

²⁰ *See Sharon K. Watkins*, 45 ECAB 290 (1994).

The record also contains several reports which did not address appellant's alleged period of disability from April 11, 2002 to the present. For this reason, these reports are not relevant to the issue of her disability or need for medical treatment for the period April 11, 2002 to the present and they are consequently of no probative value.²¹

Appellant also submitted reports from a social worker or therapist; however, these reports cannot be considered medical evidence. Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.²²

Thus, appellant has not submitted any reasoned medical evidence showing that she was disabled beginning April 11, 2002 while Dr. Solgama's well-reasoned report supports that she no longer had any disability after April 11, 2002. She has not met her burden of proof. On appeal, appellant's representative also alleges that the questions posed to Dr. Solgama, were leading. However, the Board finds that the evidence does not indicate that the Office acted inappropriately and Dr. Solgama's report indicates that he relied appropriately on a review of appellant's history and findings on examination in forming his opinion.

CONCLUSION

The Board finds that appellant failed to provide rationalized medical evidence establishing that her claimed disability for the period April 11, 2002 to the present was causally related to her employment-related psychiatric condition.

²¹ See *Mary L. Henninger*, 52 ECAB 408 (2001).

²² *Jan A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated April 3, 2006 is affirmed.

Issued: June 6, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board